

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MELLON NATIONAL BANK AND TRUST COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2498

Decision No. CU-2883

Counsel for claimant:

Reed, Smith, Shaw & McClay

Appeal and objections from a Proposed Decision entered August 21, 1968.
No oral hearing requested.

Hearing on the record held October 20, 1971.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on August 21, 1968, denying the same for the reason that it was based on an unsecured obligation of Compania Cubana de Electricidad ("Cuban Electric"), a company qualifying as a national of the United States, and the claim was therefore barred from consideration under the provisions of Section 505(a) of the Act.

Claimant filed objections and stated that the Commission concluded erroneously that unsecured debts of American corporations cannot be considered unless the debt is a charge on property nationalized by the Government of Cuba. Claimant states that the Act does not bar recognition of bank claims for sums due on loans defaulted because of the Cuban seizure, and refers to the legislative history of the Act, contending that it discloses the intent of Congress to include financial claims, such as the claim against Cuban Electric whether or not it was secured by a mortgage or lien. Claimant further contends that the Cuban Government explicitly assumed the liabilities of Cuban Electric and that this action created an obligation

of the Cuban Government recognizable under the Act. Finally claimant asserts that the Commission allowed claims for deposits in American banks in Cuba, in spite of the fact that such deposits were not secured by a mortgage or lien.

The Commission has given full consideration to claimant's objections and accompanying brief and finds that Section 505(a) of the Act makes no exceptions for unsecured debts owed to banks or other financial institutions, but simply excludes from consideration by the Commission debts of corporations qualifying as United States nationals, unless such debts were a charge on property nationalized or taken by the Government of Cuba. There is no room for construction of Section 505(a), because the text of the statute is clear, certain and unequivocal (Lewis v. United States, 92 U.S. 618, 23 L.Ed. 513 recited in United States v. Turner, U.S.C.A. 2nd Cir. 246 F.2nd 228 (1957)).

On August 6, 1960, the Cuban Government nationalized the properties of Cuban Electric and simultaneously announced that the Cuban State was subrogated in the place and stead of the company with respect to its properties, assets and liabilities. It should be noted, however, that in the first paragraph of Resolution No. 1 which listed Cuban Electric as nationalized, the properties are confined to those existing in the national territory of Cuba. In subrogating the Cuban State as owner of the nationalized properties, the Resolution refers to those properties mentioned previously as nationalized. It is clear and the attitude of the Cuban Government since 1960 confirms that the Cuban Government intended to assume only the assets and liabilities within Cuba, and that it was not concerned with the creditors in the United States.

In our decision in the Claim of Cuban Electric Company (Claim No. CU-2578) we have certified a loss of \$267,568,413.62. In determining this loss we have not deducted from the assets of the company the obligations to the claimant herein, because this debt is still considered to be a liability of Cuban Electric, not affected by the actions of the Government of Cuba. It is therefore evident that this debt claim could not now be certified as a loss within the scope of the Act, even if Section 505(a) did not bar such certification.

With respect to claimant's observation that the Commission certified to depositors the loss of their accounts in American banks in Cuba, the decision in the Claim of Floyd W. Auld (Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]) shows that the bank accounts were initially transferred to Banco Nacional de Cuba where they remained temporarily in effect. Subsequently, however, the bank accounts were confiscated by various actions of the Cuban Government and the Commission allowed these bank account claims because they were based on property confiscated from the claimant depositors and were not regarded as claims against American banks whose assets had been nationalized by the Cuban Government.

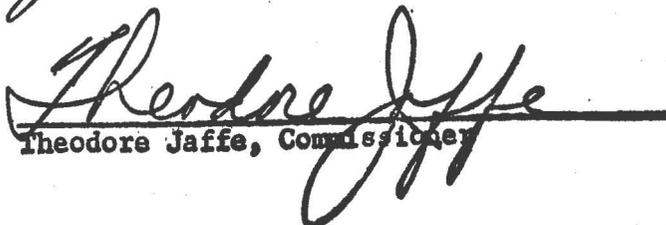
Summarizing, it is concluded that under the provisions of Title V of the Act the Commission is precluded from considering the unsecured debt of the claimant against Cuban Electric.

In view of the foregoing, the Commission finds no valid basis for altering the decision previously entered. Accordingly, the Proposed Decision of August 21, 1968 is affirmed in all respects.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MELLON NATIONAL BANK & TRUST COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2498

Decision No. CU 2883

Counsel for claimant:

Reed, Smith, Shaw & McClay

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MELLON NATIONAL BANK & TRUST COMPANY in the amount of \$1,737,745.00 and is based upon a loss assertedly sustained in connection with a loan granted to the Cia. Cubana de Electricidad (Cuban Electric Company).

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)]⁷, the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba, or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 505(a) of the Act provides:

. . . . A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

This claim is based upon a loss assertedly sustained by the failure of the Cia. Cubana de Electricidad to repay a loss due to claimant.

The records of the Commission reveal that Cia. Cubana de Electricidad is a corporation organized under the laws of the State of Florida, and qualifying as a United States national. Therefore this claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

The Government of Cuba published Resolution No. 1 dated August 6, 1960 (pursuant to Law No. 851 of July 6, 1960), which listed as nationalized the Cuban Electric Company. It therefore appears that the Cuban Electric Company sustained the loss of its assets in Cuba, on August 6, 1960.

Claimant contends (1) that the debt is compensable as the debt of a nationalized enterprise under section 502(3) of the Act; (2) that it is compensable under Section 505(a) as a charge on nationalized property; and (3) that under the terms of Resolution 1, the Government of Cuba assumed the liabilities of the Cuban Electric Company.

Inasmuch as the Cuban Electric Company qualifies as a United States national, its listing in Resolution 1 had the effect of taking of its assets by the Cuban Government. The company remained liable for its debts under the terms of Resolution 1.

There remains for determination the question whether a bank may recover for the non-payment of a debt owed by an entity qualifying as a United States national under Title V of the Act, if the debt owed is not a charge on property which has been nationalized, expropriated, intervened or taken by the Government of Cuba.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant contends that Section 505(a) limits recognition of claims for debts owed by United States corporations which were nationalized, but further asserts that the legislative history of Section 505(a) makes it clear that this section was not intended to apply to the claims of banks for debts arising out of loan activities.

The legislative history reflects the following with respect to Section 503(a):

The purpose of this provision is to make clear that the Foreign Claims Settlement Commission does not have jurisdiction to consider claims over American nationals

arising out of debts or other obligations for merchandise sold or services rendered to any corporation, association, or other entity organized under the laws of the United States or of any State, District of Columbia, or the Commonwealth of Puerto Rico provided, however, that the debt or obligation is not a charge on property taken by the Government of Cuba. It is not intended to exclude claims of banks, insurance companies, financial institutions, or other corporations, associations, or legal entities based upon the taking of assets in Cuba including assets in the form of debts or other obligations. Nor is it the purpose to exclude claims of those whose accounts in Cuban banks were nationalized, expropriated, intervened, or otherwise taken by the Government of Cuba. (Senate Report No. 701, 89th Congress, 1st Session, at page 4.)

Section 503(a) of the Act provides for recognition of claims against the Government of Cuba by United States nationals for losses resulting from the taking of property (or rights or interests therein); and Section 502(3) clarifies that such property may include debts of nationalized enterprises. Section 503(a) clearly provides that where an entity qualifies as a claimant, one claiming an ownership interest therein may not maintain claim. Nevertheless, a person may maintain claim for the debt of a United States national corporation if such debt is a charge upon property which has been taken.

The cited portion of the legislative history confirms that legal entities may recover for the taking of their assets in Cuba, including debts, such as accounts receivable. The history does not disclose, however, that an exception not apparent on the face of the Act exists in favor of banks, as contended. Quite simply, assets in Cuba do not include debts of a United States company.

Similarly, there is no reason to consider the Government of Cuba "in effect as collecting revenues from the Company's property in trust for the holders of such assumed liabilities, thereby constituting a charge in favor of the claimant upon property taken" as advocated by the claimant. Under no rule of international law is a trust created upon the property nationalized or taken by the Government in favor of an unsecured creditor of such property's former owner.

The Commission holds that claim may not be maintained under Title V of the Act for the debt subject of this claim due from an entity qualifying as a United States national, as the debt owed was not a charge on property which was nationalized, expropriated, intervened or taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, supra)

Claimant has not submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore, the Commission is without authority to consider this claim, and it is accordingly denied.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AUG 21 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)